

Hunger, Need, and the Boundaries of Lockean Property

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ABSTRACT: Locke's property rights are now usually understood to be both fundamental and strictly negative. Fundamental because they are thought to be basic constraints on what we may do, unconstrained by anything deeper. Negative because they are thought to only protect a property holder against the claims of others. Here, I argue that this widespread interpretation is mistaken. For Locke, property rights are constrained by the deeper 'fundamental law of nature' which involves positive obligations to those in need and confines the right to excess property within circumstances where it is not needed to preserve human life.

RÉSUMÉ: Le droit de propriété de Locke est généralement considéré comme fondamental et strictement négatif. Fondamental car il détermine ce que nous pouvons faire, sans être lui-même contraint par des normes plus profondes. Négatif car on considère qu'il ne fait que protéger les propriétaires contre les prétentions des autres. Je souhaite démontrer que cette interprétation est erronée, le droit de propriété étant soumis chez Locke à une loi plus profonde, la «loi fondamentale de la nature», qui suppose des obligations envers les plus vulnérables et limite le droit à l'excès de propriété s'il entre en conflit avec la préservation de la vie.

Locke's legacy has been usurped. Often, he is seen as a champion of property rights whose only corresponding obligations are negative, demanding that one does not interfere with the property of others. When searching for an intellectual pedigree to attach to the view that property rights are absolute and immune to the claims of any individual or government, people naturally turn to Locke.

Most commonly, Locke is understood to arrive at this conclusion through a natural rights approach that finds the right to property to be among the basic liberties that cannot justly be infringed. More recently, some have considered Locke's system to be closer to the utilitarian tradition, deriving property rights that are no less durable, but through something resembling a utility calculation that derives their legitimacy indirectly from a concern for the common good.

In what follows, I aim to depose the usurpers and return Locke's legacy to its rightful heirs, who are neither libertarian nor utilitarian. The right to property that Locke proposes in the *Two Treatises of Government* is a natural right, but it is not the only natural right, nor is it the strongest. Far from being absolute, Locke's property rights have clear boundaries that will, in practice, impose substantial obligations on those who hold property. Since those boundaries will forbid keeping property that could otherwise serve to save a human life, the "true heirs" of a Lockean view of property would be sufficientarians who require that all persons be brought to a level sufficient to survive before substantial liberty or inequality of property can be permitted.

Since there are no rigorous standards for how one might count as a philosophical inheritor, my primary goal here will not be to either determine who counts as a modern "Lockean," nor to advocate for the claim that we ought to adopt the property system I

here identify as Locke's. Instead, my aim here is primarily historical. It is to understand what the boundaries and limits of property rights are in Locke's *Two Treatises*. To do this, I offer six sections. First, I will lay out the alternative interpretations of Locke as the advocate of absolute property rights and limitless (or nearly limitless) property acquisition, whether for libertarian or quasi-utilitarian reasons. Next, I will discuss the fundamental law of nature and its role as the moral framework for Locke's *Two Treatises*. In the third section, I will observe how Locke's property rights are initially invoked as a solution to a very specific problem, and in the fourth section I will demonstrate how attention to this origin illustrates that there is a boundary on property rights that can never be transcended. The fifth section will acknowledge and discuss some of Locke's statements on property and charity from beyond the *Two Treatises*, and the sixth concluding section describes what might be demanded of us if we were to adopt Locke's system.

1. Limitless Property or Limited Charity in Locke

1.1 As recently as 2009, Locke has been placed in the “conservative” and “libertarian” tradition,¹ with a theory of property whose only obligation is a negative one: to refrain from interfering with anyone else’s property. On this account, Locke’s view has it that, so long as opportunities are left for everyone to enlarge their own property holdings, everyone is free to gather and keep as much property as they can, short of doing so by theft, fraud, or other coercion.

Eric Mack finds Locke’s influence in the political thought leading to the American Revolution, identifying it in quotes such as those from John Trenchard and Thomas Gordon, who wrote together as “Cato” in the American colonies of the 1720s saying

[t]he privileges of thinking, saying, and doing what we please, and of growing as rich as we can, without any restriction, than that by all this we hurt not the publick, nor one another, are the glorious privileges of liberty. (Mack, 2009, 136)

Mack himself acknowledges that Locke’s own system does not begin with a permission to grow as rich as one can “without any restriction,” since it includes initial provisos forbidding spoilage and requiring that sufficient amounts be left for others.

In the proviso against spoilage, Locke observes that

[a]s much as any one can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in: whatever is beyond this, is more than

¹ See Mack (2009), which is volume two in the “Major Conservative and Libertarian Thinkers” series.

his share, and belongs to others. Nothing was made by God for man to spoil or destroy. (II.31)²

Regarding sufficiency, Locke tells us that “God ... commanded [humans] to subdue the earth.” (II.32) and that the

appropriation of any parcel of *land*, by improving it, [was not] any prejudice to any other man, since there was still enough, and as good left; and more than the yet unprovided could use. So that, in effect, there was never the less left for others because of his inclosure for himself: for he that leaves as much as another can make use of, does as good as take nothing at all. (II.33)

Despite Locke including these explicit limits on legitimate property holdings, both of these provisos are, according to Mack, rendered moot once money is invented. Because money does not spoil the way, say, venison does, its invention deprives “the spoilage proviso of any capacity to limit the extent of any person’s rightful wealth.” (Mack 2009, 66) Contrary to Locke’s “official argument about the enough and as good proviso” that claims “it is rescinded via people’s mutual consent to money,” Mack argues instead that the commercial economy that money allows has such greater economic opportunities (but not access to raw materials) that the “proviso will (almost) always be satisfied.” (Mack 2009, 70-72) Even though Locke begins with two explicit limitations on the expansion of property rights, this reading claims that invention of money effectively nullifies those

² All references to text from the *Two Treatises of Government* will be cited by reference to the Roman numeral of the treatise in which they appear, followed by the Arabic numerals of the paragraph in which they appear, separated by a period. This quotation from the thirty-first paragraph of the *Second Treatise* is therefore “II.31” Due to the history of this paper’s writing, all quotations from the *First Treatise* are drawn from Locke (1999), while all quotations from the *Second Treatise* are drawn from Locke (1980).

limits, justifying property rights that allow property accumulation to expand without any limit at all.

Nearly fifty years before Eric Mack, C. B. Macpherson made a version of this argument in even greater detail. Macpherson agrees that Locke's view grounds entitlement to boundless property acquisition, transcending even the limits Locke himself initially imposes in the provisos concerning spoilage and sufficiency. His interpretation is that "Locke's astonishing achievement was to base the property right on natural right and natural law, and then to remove all the natural law limits from the property right." (Macpherson 1962, 199)

Like Mack, Macpherson also argues that Locke accomplishes this "astonishing achievement" through the invention of money. On Macpherson's understanding of Locke, the invention of money is crucial for Locke's entire political theory, because only with money is it possible to acquire enough property to make the founding of a state rational. Prior to money, the provisos will leave individual holdings so small and manageable that there is little incentive to transfer any rights over to a state in exchange for help in protecting that property. Only after the invention of money can holdings expand to the point where it becomes sensible to enter into a state with others for the protection of that property.

While the spoilage proviso limits the acquisition of perishable goods, once people invented imperishable money, this "rendered inoperative the spoilage limitation, for one could now convert any amount of perishable goods into money, which did not spoil." (Macpherson, 1980, xvii)

As for the sufficiency proviso, Macpherson finds things slightly more complicated, not least because Locke changed his argument slightly across editions of the *Two Treatises*. As Macpherson reports, the first three editions simply assumed that the invention of money would result in the appropriation of all available land, but that this appropriation was justified by the consent to use money. Later editions included an argument that since appropriated land is so much more productive than unclaimed land, its total appropriation was not at odds with the proviso since the “original requirement had been that private appropriation should leave enough to meet everyone’s equal right to subsistence, and that requirement was still satisfied after all the land had been taken up.” (Macpherson 1980, xvii)

With the provisos thus overcome, Macpherson concludes that “there was no limit to the amount one could appropriate by mixing one’s labour with what had been given to mankind in common.” (Macpherson, 1980, xvii) Recall that removing all limits on property acquisition is a crucial moment in Locke’s political philosophy, according to Macpherson. Only for the large and complex holdings made possible in the monetary economy does “the need for government become pressing.” (Macpherson, 1980, xviii) Before money, it would be irrational to consent away one’s rights to protect one’s own property; only after money does government become a sensible option. According to Macpherson, the unlimited acquisition permitted by the invention of money is not an accidental offshoot of Locke’s political philosophy, but a necessary stop on the way to the destination of founding a state.

1.2 Mack and Macpherson articulate an influential reading of Locke's account of property that has persisted for more than fifty years. This reading acknowledges that the natural right to property begins with limitations, but finds that these limitations are removed once money is invented. Once the provisos that would limit the accumulation of property are gone, property and wealth are left to expand without limit.

The flaw with this reading, as I shall argue shortly, is that it overlooks both the presence and the influence of what Locke identifies as "the fundamental law of nature" which commands "the preservation of mankind." (II.135) Too often, even the interpreters who acknowledge the fundamental law of nature downplay its importance. Even some who integrate it into their reading still end up concluding that the obligations of property in Locke are overwhelmingly negative, and that property rights are without significant limit. One such interpreter is Steven Forde, who argues that

a close reading of Locke finds that his philosophy bottoms not upon individual right, but on a more communal concern for the common good." (Forde 2009, 429)

Instead of taking the property right in Locke to be a matter of independent natural right, Forde judges it to be a kind of "utilitarian" derivation from a more general commitment to promoting the common good. As Forde argues

[i]f the common good is the grounding principle of Lockean property, the common good is the end to which private property is only a means. Locke's argument for property rights would then be essentially utilitarian. (Forde, 2009, 435)

Despite private property rights originating in a concern for general welfare, Forde still insists that those property rights themselves are so durable that they are “largely immune from infringement in the name of ... sociable principles.” (Forde 2009, 453) This is a surprising result generating what Forde calls “the paradox of charity.” How could one rightfully refuse to give charitable aid on the strength of one’s right to property if property rights themselves are just a derivation from concern for the common good, which presumably demands providing charitable aid? This paradox can be resolved, according to Forde, by noticing that “the common good ... is much better served by this immunity than by any other approach.” (Forde 2009, 453) Property rights get their immunity from most outside claims because a system with such immunities is what best promotes the common good. The same is true for all individual rights, on Forde’s reading of Locke, and if “Locke’s system of rights-under-natural-law is utilitarian, we would at least have to call it ‘rights utilitarianism.’” (Forde 2009, 453)

The “immunity” that Locke’s property rights have from “infringement” is only overcome in very rare circumstances according to Forde, because “[c]harity is a more exacting moral standard, but one to which people cannot be strictly held –except in certain circumstances.” (Forde 2009, 451) Forde thinks it is not entirely clear when such circumstances are in effect (understandably, since it is often hard to discern what precisely conduces to the common good). However, Forde commits himself to the idea that “placing moral limits on accumulation through labor, will only harm the common good.” (Forde 209, 449)

1.3 The impression that the property rights Locke describes permit limitless, or nearly limitless, acquisition and accumulation runs deep, across several different interpreters and interpretive strategies over decades of scholarship. The picture that emerges suggests that if Locke's system of property was adopted, it would permit property acquisition to expand without boundary, and to allow people to legitimately gather indefinitely extensive holdings because their wealth would remain "largely immune" from the claims others might make on it. It is this impression I aim to correct in the balance of this paper. Instead of property rights that are limitless in principle or in practice, Locke's property rights are granted in the context of another moral boundary that will impose a practical limit on how much any person may gather and keep for themselves in a wide variety of cases. While it is true that it is, in principle, possible for these property rights to legitimately extend without limit inside these boundaries, such merely conceivable cases will not be the model for most actual implementations of Locke's system of property. The crucial moral boundary for Locke is the fundamental law of nature that commands the preservation of human life. Because property rights are granted in the context of this boundary for Locke, they cannot be asserted in violation of it. Far from describing property rights that carry an "immunity" to the claims of others, Locke's property rights may only legitimately expand to excess once no human life is threatened by death from privation. Put crudely, the point of this paper is to show that Locke's considered system of property does not resemble (as is often supposed) a libertarian scheme like the one laid out in *Anarchy, State, and Utopia* (Nozick 1974), but instead imposes obligations on all property holders much closer to those described in "Famine, Affluence, and Morality." (Singer 1972)

To show this, two related cases need to be made. The first, made in section 3, will illustrate the way private property rights are first invoked as the solution to a puzzle. The second, made in section 4, will argue that attention to the origin of private property rights illustrates their relationship to the fundamental law of nature, which thereby establishes a boundary that forbids keeping excess property for oneself whenever human life is endangered. Both of these cases require an understanding of the fundamental law of nature, to which the next section is devoted.

2. The Fundamental Law of Nature

In *Anarchy, State, and Utopia*, which is obviously not intended as a historical investigation of Locke, Robert Nozick nevertheless describes himself as “following the respectable tradition of Locke.” (Nozick, 1974 9) This is not only because he takes his substantive political views to closely resemble Locke’s, but also because Nozick says he presents his own view just as Locke does, that is without its “moral background, including the precise statement of the moral theory and its underlying basis.” (Nozick, 1974 9) In presenting his own view that way, Nozick takes himself to be in good company with Locke “who does not provide anything remotely resembling a satisfactory explanation of the status and basis of the law of nature in his *Second Treatise*.” (Nozick, 1974 9) Such a task is “for another time. (A lifetime?)” (Nozick, 1974 9)

A cursory read of Nozick here might suggest that Locke *endorses* the practice of providing a political theory without mention of a background moral theory, but quite the opposite is true. Locke takes himself to have given both the full content of and adequate grounding for the relevant moral theory in the *Two Treatises*, it is just that Nozick does

not find Locke's explanation to be "anything remotely resembling...satisfactory." (Nozick, 1974 9) Since systems grounded explicitly on God's commands are less popular now than at the time Locke was writing, perhaps many modern readers are likely to side with Nozick's judgment that Locke's *grounding* for this system is unsatisfactory. This does not mean we can achieve a satisfactory *understanding* of the system of property presented in Locke's *Two Treatises* without reference to the grounding Locke took to be adequate, which was the fundamental law of nature.

The fundamental law of nature (sometimes just the "law of nature") is the overarching moral principle of the *Two Treatises*; its status is supreme and its basis is no less than God's own command. While it may not describe the entirety of the moral law for Locke, it is one of the bedrock principles governing all of human behavior. In the state of nature it guarantees that "though this be a *state of liberty*, yet *it is not a state of licence*," (II.6) and in governments it asserts its authority over all civil laws. As Locke himself puts it,

[t]he *rules* that they [the legislators] make for other men's actions, must, as well as their own and other men's actions, be conformable to the law of nature, *i. e.* to the will of God, of which that is a declaration, and the *fundamental law of nature being the preservation of mankind*, no human sanction can be good, or valid against it." (II.135)

Evidently, explaining the relevant background moral theory for his political philosophy took Locke considerably less than a lifetime. The content of the fundamental law of nature is remarkably straightforward. As Locke repeatedly states, the fundamental law of nature commands us "to preserve the rest of Mankind." (II.6) This directive is

repeated seven more times throughout the *Second Treatise*, at II.7, II.11, II.16, II.135, II.159, II.168, and II.183. The only apparent exceptions to the fundamental law are really just further applications of it. The death penalty can be exacted “to do justice on an offender,” (II.7) but only to an offender who has himself taken a life or threatened to do so. (II.19) This will also justify killing in self defense, but only those who make mortal threats against others: “*by the fundamental law of nature, man being to be preserved as much as possible, when all cannot be preserved, the safety of the innocent is to be preferred... .*” (II.16) The only cases that justify taking human life are those that eradicate humans who threaten to destroy even more human life because they “are not under the ties of the commonlaw reason” and cannot be trusted any more than “a *wolf* or a *lion*.”³ (II.16)

As the *fundamental* law, it will provide limits and exceptions to all other laws. It permits killing a thief who threatens to kill you for only some of your possessions, but forbids killing a peaceful thief who steals from you all you are worth. (II.19). It limits how much a legitimate conqueror can take in the spoils of a just war to only so much as

³ Even the surprising permission for enslaved persons to commit a kind of suicide at II.23 is designed to be consistent with the fundamental law of nature. Slavery (opposed to what Locke calls mere “drudgery”) has a precise and unusual meaning on Locke’s view. It is a kind of delayed death penalty, permitted by the reasoning that someone who has the right to take another’s life is also permitted all lesser rights over them. But this will mean that an enslaved person can only legitimately become so by “having, by his fault, forfeited his own Life, by some Act that deserves Death.” (II.23) Once the wrongdoer’s life is forfeited by threatening or taking other human lives, those who hold him may put him into service and in doing so do “him no injury by it,” because the enslaved person can always provoke his holders into expediting that deserved death penalty if the servitude seems too great a hardship. Locke’s unusual account of slavery might itself be seen as a further application of the fundamental law of nature, since it allows a way for even human lives deserving of the death penalty to be preserved and extended. (My thanks to Margaret P. Battin for prompting me to get clear on this point.)

will leave the wives and children of the conquered enough for their survival. (II.183) It also limits the power of the state itself from invading the people's "*preservation*, or consequently the means of it." (II.149) But it also grants the executive emergency exemptions to positive laws "wherein a strict and rigid observation of the laws may do harm." (II.159) For example, the executive would be permitted "to pull down an innocent man's house to stop the fire, when the next to it is burning." (II.159) Throughout, Locke repeatedly emphasizes that every other command is to be subject to the fundamental edict to protect human life as much as possible. This requirement falls on each person to preserve themselves, but it also obliges them, when that self-preservation "comes not into competition ought [they], as much as [they] can, *to preserve the rest of Mankind.*" (II.6)

The fundamental law of nature may not exhaust all of the moral law, but it holds without exception and with lexical priority over all other laws, rights, and claims. As I aim to show in section three, the right to private property is no different in being subject to the constraints of the fundamental law of nature, and this is vividly clear if we attend to the way Locke first invokes private property rights in the *Two Treatises*. Private property rights, according to Locke, are not a matter of *fundamental* natural right, nor a "rights-utilitarian" derivation from another concern. They are instead natural rights that are subservient to the fundamental law of nature, and that are first invoked as a way of obeying it.

3. The Puzzle of Nourishment and the Invention of Private Property

Locke's chapter on property opens with a puzzle. We know from both reason and scripture that God made the world and its plenty to sustain all mankind. But we also

know from that same scripture (at the 115th Psalm) that God “*has given the earth to the children of men; given it to mankind in common.*” (II.25) The puzzle is how we are to reconcile these two pieces of knowledge, since “this being supposed, it seems to some a very great difficulty, how any one should ever come to have a *property* in any thing.” (II.25) If everything is equally the property of everyone, how could I ever make any particular piece of property exclusively mine?

This puzzle is especially troubling when we consider the case of nourishment. We might avoid this puzzle altogether in simpler cases where I use the property that God has given to us each equally in a way that does not exclude anyone else’s use of it. When I use a tree to provide me shade from the sun, I exclude no one else from doing the same later (or perhaps even along with me). Things get trickier if I chop down that tree and some others to make a shelter, but that useful structure is still one that I can share with others as I use it and leave for others to use after me. Perhaps this is a benign transformation of our common property that infringes on none of our collective rights in it. But this simply cannot be the case when I appropriate a piece of our common property to myself for my nourishment. In doing this, I exhaust this property’s capacity to nourish anyone else. If I am to transform some commonly held food into my own flesh and energy without stealing, I must gain a uniquely exclusive right to it. But how could I do this when the rights to the food are held in common? This is a problem even in the state of nature, because it has to do with the very metaphysics of nourishment. The food that nourishes us becomes a literal part of our bodies, and can then nourish no one else. As Locke points out:

[t]he fruit, or venison, which nourishes the wild *Indian*, who knows no inclosure, and is still a tenant in common, must be his, *i.e.* a part of him, that another can no longer have any right to it, before it can do him any good for the support of his life. (II.26)

This level of exclusion is difficult to reconcile with the Psalm that informs us that the earth instead belongs equally to all the children of men, because no bit of food can *nourish* us in common, even though our property rights in all food are *held* in common.

Most commentators overlook this motivating problem for Locke's discussion of property, perhaps taking it to be mere rhetorical posturing. C. B. Macpherson even instructs his readers to pay little attention to these passages, saying "The early stages of his argument are so familiar as to require little comment." (Macpherson, 1962, 200) But inattention here will cause us to ignore the crucial problem that Locke specifically draws our attention to both because it is a problem his opponent Robert Filmer cannot satisfactorily solve, and because it is a problem his own account can. Locke takes this problem seriously, and in understanding him, so should we.

The first two solutions Locke considers (a universal monarch or universal consent) might seem like bizarre rhetorical framing devices, plucked from thin air, but at least one is explicitly proposed by one of Locke's intended targets. To solve this problem, one might suppose (as Robert Filmer actually does) that the solution is to be found in "one universal monarch" descending from Adam, who is given an exclusive property right over the earth and who can then transfer that exclusive right to others, so that they might gain the kind of exclusive property right that is required to make the process of nourishment legitimate. (II.25) But this solution is a direct contradiction of the very

scripture that tells us the earth was first given to mankind in common (and one that would suggest a very different overall political theory if adopted), and so cannot be the right one.

Locke considers another solution that would at least be compatible with all that we have learned from reason and scripture. This would be if we could somehow gain the consent of all our fellow humans to grant us exclusive rights to, say, an apple. If this could be done, then we could both privately use the plenty God gave us all for our sustenance and respect our mutual rights over that plenty. But this solution is practically impossible since, while such consent would have been sufficient, “[i]f such a consent as that was necessary, man had starved, notwithstanding the plenty God had given him.” (II.28)

A solution to this problem is especially pressing. Permitting ourselves to starve to death while surrounded by the food God provided us is not only absurd, it would be a violation of the obligations that come to us from the fundamental law of nature. Earlier, in Chapter 2 of the *Second Treatise*, Locke makes clear that even in the state of nature, there are still restrictions on our behavior. Suicide is prohibited even before humans could make any law against it, because we are not our own property. We are instead “the workmanship of one omnipotent, and infinitely wise maker” we “are his property, whose workmanship [we] are, made to last during his, not one another’s pleasure.” (II.6) Therefore, each person is “*bound to preserve himself*, and not to quit his station wilfully.” (II.6)

There must be some way to gain the kind of exclusive right over property necessary for it to legitimately nourish us. Otherwise, we not only ignore the purpose for which the earth was created, but we risk violating the law of nature’s explicit instruction

to preserve our own lives. It is no solution to this problem to note that such a death would be passive rather than active. The law of nature forbids us from “quitting our station willfully,” but it also instructs humans that they may neither “abandon” nor “neglect” their “own preservation.”⁴ (II.168)

The puzzle is this: either course of action available to us seems to involve a violation of God’s laws. If we refrain from taking from the commons to respect the property rights the rest of mankind has in them, we risk violating its requirement that we preserve our own lives. If we instead take from the commons so as to sustain ourselves, we will have to do so without the consent of all of the rest of mankind. This looks to be nothing short of “a robbery” from them, since everyone has an equal property right in that commonly held property. (II.28) Our situation seems to amount to a paradox: to obey the command to preserve human life, we must steal; but to obey the commandment against stealing, it seems we must perish.

The solution to this puzzle comes, of course, from Locke’s labour theory of private property. Though we ourselves might ultimately be God’s property, our labour is exclusively our own. (II.27) A person’s labour is exclusive to them in just the same way that a bit of food must be to nourish them, so it is through the mixture of our labour with that bit of commonly held property that we might gain the right sort of exclusive claim to it.

When someone gathers apples or acorns “*labour* put[s] a distinction between them and common: that added something to them more than nature ... had done; and so

⁴ This is why no human can voluntarily transfer power over their life and death to another, be they individual or government.

they became his private right.” (II.28) This is how the seeming paradox is resolved: adding the labour that is exclusive to one person to some of the acorns that belong to all makes them distinct from the rest and grants the permission for them to become part of the body exclusive to that person, without violation of any of God’s commands. Our first encounter with private property rights shows them to function as permissions from God to make food exclusive to ourselves for our sustenance and to avoid starvation. Instead of being fundamental natural rights themselves, private property rights are secondary to the fundamental law of nature’s requirement to preserve human life, and are first observed as a means to obey that law and preserve our own human lives, instead of as ends in their own right. This does not make them, as Steven Forde suggests, derivations from the fundamental law of nature, because neither their authority nor their mechanics descend from the fundamental law of nature itself. However, their rhetorical origin vividly demonstrates that they are *subservient* to the fundamental law of nature, should they ever conflict.

Once the mechanism of the labour theory is in place, we can use it to gain exclusive rights to all manner of things beyond food including “the turfs [our] servant has cut; and the ore [we] have digged in any place, where [we] have a right in common with others.” (II.28) It is through the mixture of the labour that is exclusively ours that such things can become a piece of exclusive “*property*, without the assignation or consent of any body.” (II.28)

Locke’s labour theory of property will, of course, go on to have many more ramifications in both the *Second Treatise* and beyond. As a response to Filmer and as an attack on the traditional aristocratic property claims deriving from a monarch’s gift, the

theory is a pivotal historical moment. It is also hardly an uncontroversial account of property in its own right, but for our purposes here what is important to note is the way the labour theory offers a kind of particularly exclusive right. This is the distinctly private property right that one must have in a piece of food if one is to be nourished by it without stealing from the commons. Lockean private property rights were originally invoked as a solution to the problem of hunger.

What this origin story for property rights shows us is that property rights are not fundamental rights with overriding authority. First invoked as instruments to obey the fundamental law of nature, they, like all other natural or civil rights can never be “valid against it.” (II.135)

4. The Structure of Private Property Rights and the Boundaries of Accumulation

4.1 In granting us the power to labour on objects and thereby make them distinct from the objects that are commonly held, God grants us a power that mimics his own powers of creation. Since our labouring is just the rearranging and transforming of pre-existing things, it will technically count only as a “making” instead of an act of full ex nihilo “creation,” in Locke’s terminology.⁵ Because our acts of making are similar to but more limited than an act of creation, they give us a similar but more limited authority over what we have made. We are initially permitted these limited property rights through our mixing and making so that we can save ourselves from starvation and other sorts of death from privation. This we are required to do by the fundamental law of nature because it

⁵ Locke discusses the distinction between making and creation in the *Essay Concerning Human Understanding* (Locke, 1975) at Book II, Chapter XXVI, Section 2.

instructs us to preserve all human life as much as possible, including our own. (II.6) Because we are both God's creations and his workmanship, we are fully his property, and he has instructed us to both protect our own lives in the prohibition on suicide (II.6) and to preserve the lives of others, wherever possible. (II.6, II.7, II.11, II.16, II.135, II.159, II.168, II.183) God may destroy us as he pleases, since he has full and deeper ownership of us, but we can only permissibly destroy food in the process of nourishing ourselves when we gain a special permission to do so. Attention to the rhetorical origin of private property rights in the *Two Treatises* reveals two related ways in which those rights have limits.

The first is their limited *authority*. They exist in a hierarchy of natural rights, below and subject to the fundamental law of nature. This will mean that private property rights will always have to be circumscribed within circumstances where asserting them does not endanger any human life. Rights to excess private property are thus invalid in cases where human life is threatened in a way that the application of resources can remedy. Those in need have a legitimate claim on the excess of others, because, more properly, the right to have excess property is restricted to circumstances where that excess is not needed to preserve another human life.

This limit to the scope of their authority will, in many practical applications of them, result in a second limitation on how much property any person may legitimately keep for themselves. This practical limit will come as the result of the boundaries beyond which private property rights cannot be "valid against" the fundamental law of nature. These boundaries permit keeping enough resources to keep oneself alive even when doing so will result in others perishing because the command "to preserve the rest of

Mankind” falls on people only when their “own Preservation comes not in competition.” (II.6) But if a person can provide wealth and resources that would preserve another human life without destroying or endangering their own, then they must do so, since these are the very circumstances in which subservient private property rights cannot be valid against the requirements of the fundamental law of nature.

Staying inside these boundaries is possible, and so long as private property rights expand within them, they could indeed extend without limit. In practice, however, staying inside these boundaries might well functionally limit the excess property people can legitimately keep for themselves. If Locke’s system of property rights was wholeheartedly adopted today, there would have to be a massive, global redistribution of wealth, and excess property could not again be gathered and kept until every human life was shielded from death by privation.

Given how pervasive the sense is that the property rights Locke describes are “largely immune” to the claims of others and allow “limitless” property accumulation, this result might come as a surprise. But it has been hiding in plain sight in the *Two Treatises* all along, and I am hardly the first to notice it. The authority of the fundamental law of nature is asserted no less than eight times in the *Second Treatise* (II.6, II.7, II.11, II.16, II.135, II.159, II.168, II.183), and the primacy of human life over private property rights is vividly asserted in a lengthy passage in the *First Treatise*, (which noticeably anticipates the importance of hunger and need in relation to property by speaking of “starvation” and those who might “perish for want”):

[b]ut we know God hath not left one Man so to the Mercy of another, that he may starve him if he please: God the Lord and Father of all, has given no one of his

Children such a Property, in his peculiar portion of the things of this World, but that he has given his needy Brother a Right to the Surplusage of his Goods; so that it cannot justly be denied him, when his pressing Wants call for it. And therefore no Man could ever have a just Power over the Life of another, by Right of property in Land or Possessions; since 'twould always be a sin in any Man of Estate, to let his Brother perish for want of affording him Relief out of his Plenty. As *Justice* gives every Man a Title to the product of his honest Industry, and the fair Acquisitions of his Ancestors descended to him; so *Charity* gives Man a Title to so much out of another's Plenty, as will keep him from extream want, where he has no means to subsist otherwise; and a Man can no more justly make use of another's necessity, to force him to become his Vassal, by with-holding that Relief, God requires him to afford the wants of his Brother, than he that has more strength can seize upon a weaker, master him to his Obedience, and with a Dagger at his Throat offer him Death or Slavery. (I.42)

On Locke's own analogy, threatening to deny the needy their subsistence relief is no less a threat of murder than putting a knife to their throat, so I will spend no more time here to establish that the property rights that Locke describes in the *Two Treatises* cannot be asserted to the destruction of human life, and instead locate my sufficientarian understanding of Locke's preservationism among other interpreters who acknowledge this aspect of Lockean private property rights as limited in both their authority and scope of application.

4.2 Even the interpreters who wish to cast Locke as an advocate for “limitless” property rights with “immunity” to the needs of others acknowledge both this passage and some sort of charitable obligation in Locke.

As we have seen, Steven Forde acknowledges that there might be rare circumstances when others might overcome the immunity of one’s property rights due to their own needs, but this charitable obligation is not one to which people can “be strictly held” except in rare and unspecified circumstances. (Forde 2009, 451)

C.B. Macpherson also acknowledges the obligation described at I.42, but radically de-emphasizes it. He cites this passage once, derisively, while questioning Locke’s assumption that, once all the land has been appropriated, “the whole product will be distributed to the benefit, or at least not the loss, of those left without enough land. Even the landless day-labourer gets a bare subsistence.” (Macpherson, 1962, 212) This is about as much press as Macpherson gives to this colourful passage, while repeatedly insisting that Locke justifies “unlimited” property acquisition, once money renders the two famous provisos moot.

Kristin Shrader-Frechette has argued explicitly for limitations to the property right in Locke’s system, particularly for rights in land. She rejects Macpherson’s claim that the invention of money nullifies the spoilage and sufficiency provisos. Instead, she argues that the other two provisos are probably also best understood as boundaries. As Shrader-Frechette observes, these provisos hold for “all time,” and the invention of money does not “remove” either proviso, as Macpherson claims, it simply makes them easier to satisfy completely. (Shrader-Frechette 1993, 202)

Of the several preservationist readings of Locke on property, I will here discuss only two in any significant detail, both due to space limitations and because they serve as examples of what I take to be significant interpretive missteps in otherwise correct understandings of the obligations that fall on people in Locke's system. I will first examine James Tully's influential preservationist reading of Locke which traces a different path from mine to a potentially stronger charitable obligation, based on the abolition of private property altogether. Then I will discuss Gopal Sreenivasan's argument as representative of those that claim that the charitable obligation on those who hold excess private property is owed only to those unable to work and provide for themselves.

4.3 James Tully's book *A Discourse on Property: John Locke and his Adversaries* articulates probably the most prominent and influential preservationist reading of Locke in recent scholarship. (Tully 1980) Tully comes to what I agree is the substantively correct conclusion about the relationship between property rights and charitable obligations saying that a person is granted property rights "for the sake of preserving himself and others, once his own preservation is secured, any further use or enjoyment is conditional on the preservation of others." (Tully 1980, 132) But Tully concludes that this imposes on everyone an obligation to ensure that all have a "comfortable subsistence" instead of the bare survival that Macpherson derides. (Tully 1980, 166) This comfortable subsistence is most often to be provided by the state which has "a large amount of latitude" on how it will distribute property, but must do so within the bounds of natural law. (Tully 1980, 168) Once they have joined a state, according to Tully, no individual

could assert a private property right at all because those sorts of exclusive rights were “invalidated” once money was invented, since money made it possible to expand holdings so far that the sufficiency proviso was no longer met. (Tully 1980, 165)

Instead of being the solution to the problem of gathering more without violating the spoilage proviso, Tully sees the invention of money as the *creation* of a problem that invalidates the sufficiency proviso altogether. The invention of money “brings with it the fall of man” and “ends the golden age by creating the unnatural desire to seek more than one needs.” (Tully 1980, 150) Before money, exclusive private property rights were possible, because it was practically impossible to gather far beyond one’s needs or fair share, in keeping with the sufficiency proviso. But after money, “new constraints on ‘making use’ must be applied in order for man to act within the bounds of the law of nature.” (Tully 1980, 153) Instead of permitting the limitless acquisition that makes joining a state rational, the invention of money creates circumstances in violation of natural law, and imposes a moral imperative to join a society and put all property rights in common, so that the state may ensure in its civil laws a distribution in keeping with what natural law requires. (Tully 1980, 153)

The property arrangement Tully describes has an egalitarian feeling, emphasizing a fair share for each in society and a “comfortable subsistence” for all, but Tully rightly takes no position on what the precise property arrangements inside a state must be, other than to say that they must stay within the boundaries of natural law.

Tully describes the boundaries of natural law as those that will not permit unlimited accumulation under any circumstances, because the amount one can feasibly gather before the invention of money will have a practical limitation, and the invention of

money imposes a new moral limitation on accumulation and undermines the means by which extensive individual property rights might extend. Private property rights are not durable natural rights based on the metaphysical mixture of one's labour with some object, and so cannot persist beyond even the invention of money, let alone in a civil government.

This is where my reading of Locke diverges most sharply from Tully's. The predicament described at the beginning of Locke's chapter on property which I describe as "the puzzle of nourishment" must be nothing more than rhetorical bluster on Tully's reading, because it describes a problem that could never arise on Tully's interpretation.

On Tully's view, when God created the world and gave it to mankind in common, the rights to it were inclusive rather than exclusive. No consent was needed for anyone to take from the commons, because the commons were not, strictly speaking, property. The inclusive property held in common did not exclude anyone's use of it, and so there is no puzzle because there is no obstacle to original appropriation. The world was more akin to the seats on public transportation that "belong to everyone in common but are not property." (Tully 1980, 129) Nothing special needs to happen to justify taking from the commons on Tully's reading because it is excluded from no one by being given to mankind in common, and is free for the taking.

The major interpretive difficulty with this is not only that it demotes the opening of Locke's chapter on property to mere misleading rhetoric, because it also renders pointless the entire labour theory of property. If appropriation from the commons was never a problem in the first place, why go to the trouble of developing a theory of

property that illuminates and justifies how such appropriation can be morally permissible?

My answer is that it is precisely because Locke does think that commonly held property can exclude private usage without some special explanation (like consent or labour) and because he explicitly recognizes that the most crucial commonly held property (i.e., food) is not like seats on public transportation at all, since it must be permanently excluded in order to be properly used. This is why he develops the labour theory of property to justify private appropriation from the commons. Since I take Locke seriously at this passage, I take him to be describing a durable but limited property right to exclusive, private property, which does not *derive from* the fundamental law of nature, but remains constrained by it.

Consequently, while I agree with Tully that property rights are constrained within the boundaries of human preservation, I disagree that there can never be cases where those rights might extend without limit inside those boundaries. Whether the subsistence owed to all humans feels “bare” or “comfortable” might be a matter of opinion, but once it is provided and assured to all humans, I take Locke’s system to justify the expansion of further exclusive rights to property, based on the labour theory, even once money is invented.

4.4 While Tully’s preservationist reading of Locke goes too far in abolishing private property rights and perhaps suggesting a required level of charitable giving beyond what is needed for human survival, other preservationists do not go far enough, by restricting the charity that is owed to only those unable to work and provide for themselves.

Shortly after Tully, John Winfrey insisted that charity in Locke “is owed only to those few who are industrious but by some calamity find they have ‘no means to subsist otherwise.’” (Winfrey, 1981, 436)

Gopal Sreenivasan concurs, and provides a more detailed and recent argument. He tells us that “Locke’s discussion of charity...is often misleadingly read as affirming the right of the poor or needy just as such to be provided with the means of subsistence. In fact, the able-bodied poor –regardless of the extent of their need—do not have any right to charity, for they do have the means to subsist otherwise, namely in the form of their *labour*.” (Sreenivasan 1995, 103) This is because, the elaborate and vivid charitable obligation that falls on anyone’s “surplusage” at I.42 is only owed to those who have “no means to subsist otherwise.” As Sreenivasan insists, “charity and inheritance apply *only* where a man is unable to labour,” and “[t]hus, if a man is in need, for whatever reason, yet is able to labour, then he has no right to be provided with consumption goods.” (Sreenivasan 1995, 44-45)

While Locke does indeed say charity is owed to those who have “no means to subsist otherwise,” there are two overriding reasons to resist the interpretation Sreenivasan and Winfrey prefer. The first reason arises in just the text of I.42 itself. If we simply read to the end of the sentence where Locke supposedly imposes this restriction, we find reason to doubt that charity is owed only to those incapable of labour. Immediately after saying “...*Charity* gives every Man a Title to so much out of another’s Plenty, as will keep him from extream want, where he has no means to subsist otherwise,” Locke continues “and a Man can no more justly make use of another’s necessity to force

him to become his Vassal, by with-holding that Relief, God requires him to afford ... [than can he] with a Dagger at his Throat offer him Death or Slavery.” (I.42)

Here, Locke *cannot* be talking about subsistence being owed only to those physically incapable of labouring, because precisely what is forbidden is withholding relief in order to force someone to work as a vassal. Vassals unable to labour for themselves are equally unable to labour for others, so the only way this further comment makes sense is as a restriction on withholding relief from those able enough to be a vassal, and so necessarily able enough to provide for themselves. Since it is nonsensical to forbid someone from coercing labour out of those unable to labour (as Winfrey’s and Sreenivasan’s interpretation would demand), the most charitable reading here is to understand Locke as referring to the claim on excess that extends to all humans in need, regardless of their abilities.

The second, and even more important, reason to resist an interpretation like Winfrey’s and Sreenivasan’s, is because refusing anyone help that results in their death is a clear and straightforward violation of the fundamental law of nature. This is evident even at I.42 when Locke says “ ‘twould always be a Sin in any Man of Estate, to let his Brother perish for want of affording him Relief out of his Plenty.” (I.42) Allowing human life to be destroyed, when one has the ability to prevent that destruction is “always” a sin, according to the fundamental law of nature.

It *is* forbidden to coerce someone through their desperation, whether it comes from a sharp knife or an empty stomach, but this is not all that is forbidden. All threats to human life must be our concern, whether we cause them or not, so we might have to

preserve it against both overt threats and passive neglect. This will include the threats and neglect people pose for themselves. (Recall that suicide is explicitly prohibited at II.6.)

We should expect nothing less from a system whose moral framework instructs each of us “as much as he can, *to preserve the rest of Mankind.*” (II.6) This is why Locke cannot be restricting the charitable obligation to only those who are unable to provide for themselves. Such a restriction would amount to an amendment of the fundamental law of nature from “preserve human life as much as possible” to “preserve the lives of the industrious yet unable; let the able but idle rot.”

4.5 In sum, Locke’s considered system of property is perhaps best described as a kind of natural law sufficientarianism. Grounded in a hierarchy of natural laws, the right to exclusive private property holds in all cases where it is not invalidated by a law with higher authority. Regardless of the way the invention of money interacts with the two famous provisos, the highest law, the fundamental law of nature, will always confine the legitimate accumulation of private property to circumstances where no human life is in danger of death from privation. Once all humans are provided resources sufficient for their survival, private property rights may expand, even to the level of significant inequality, but all property held in excess of what one needs to survive will always be subject to the claims of any humans who need it for their own survival.

5. Private Property and Preservation beyond the *Two Treatises*

So far in this paper, I have restricted my interpretation to Locke’s system of property as it is presented in the *Two Treatises*. I do not intend to be describing the

system of property had somewhere in his mind or that he kept secretly in his heart, only the one he presented in a single work that he considered carefully, revised frequently, and explicitly released for public and philosophical consumption. As I hope to have shown in the previous sections, that system is a natural law sufficientarianism that allows the accumulation of excess private property only once every human life is protected from death due to want.

Other interpreters have helped themselves to Locke's other writings where he mentions property and charity, and so a few of those passages are worth acknowledging in closing. Locke's statements on property and charity beyond the *Two Treatises* are not univocal, and come from some sources he may never have intended to be released to the public, so this provides further reason to exclude them from my considered interpretation, but at least two of them are perfectly consistent with what I argue is the correct understanding of Locke's system of property.

5.1 In *Venditio*, a short, posthumously published discussion of the theory of just price, Locke explains that you as a merchant are permitted to sell your wares at (but not above) even an inflated market rate. This is because, should you sell below that market rate, that only incentivizes some other savvy merchant to buy your wares and then resell them at the higher rate the market will bear, taking the extra profit that should have been yours. This is permissible and "no injustice" even for a corn seller selling at a town "pressed with famine." There the merchant may sell his corn "at the utmost rate he can get for it," from those able to pay for it. If, however,

he carry it away unless they will give him more than they are able, or extorts so much from their present necessity as not to leave them the means of subsistence afterwards, he offends against the common rule of charity as a man, and if they perish any of them by reason of his extortion [he] is no doubt guilty of murder.” (Locke & Wooton 1993, 445)

These statements in *Venditio* are perfectly consistent with the *Two Treatises*' sufficientarian boundaries on private property expansion. From those who are able to pay without putting their present or future “means of subsistence” in danger, a merchant may extract “the utmost rate” for their wares. However, such profit seeking is explicitly confined to cases that will not endanger human life, and if a merchant’s “extortion” results in someone’s death, that simply counts as murder. The constraints Locke places on just price in *Venditio* are precisely the same as those he places on private property in the *Two Treatises*: they can expand as far as the market will take them, so long as no human dies as a result.

5.2 Though there is scholarly dispute about it, the recommendations Locke makes in his *An Essay on the Poor Law* are also consistent with the boundaries of property described in the *Two Treatises*.

Much of the confusion comes from the emphasis Locke places on spurring the idle but able to work. He claims that there is a duty that falls on the able-bodied to work and outlines a number of startlingly harsh punishments to punish the idle for not working. For example, a first time offender caught begging with a counterfeit beggar’s pass “shall lose his ears” and second time offenders “shall be transported to the plantations.” (Locke 1997,

186) As Himmelfarb (1984) explains, these punishments were harsh even for Locke's day. It is important to note, however, that none of them included the death penalty. The punishment for idleness can be harsh, but it cannot be death.

Some punishment might be appropriate for those who refuse work that would otherwise sustain them, because they themselves are obliged to preserve their own lives, and refusing the work that would enable them to do so is a violation of this obligation. This explains why Locke explicitly insists in *An Essay on the Poor Law* that those in need are obliged to take and do work offered to them.

Eric Mack finds this obligation "against the general pro-liberty tenor of Locke's writing." (Mack, 2009, 73.) However, it is important to remember that Locke's "general pro-liberty tenor" coexisted with natural laws which made even the state of nature one that is a state of "liberty, yet it is not a state of licence." (II.6) Since our liberties are constrained by the fundamental law of nature, we may not do anything that results in the destruction of a human life, including our own. Since such work is a way for the poor to earn enough to support their own lives, their obligation to preserve their own lives transmits itself down to an obligation to take the work that is offered. To do otherwise is to "abandon" or "neglect" one's "own preservation," which the fundamental law of nature explicitly forbids. (II.168)

Locke even makes the obligations of charitable assistance explicit (and explicitly not dependent on work) in the essay, saying "Everyone must have meat, drink, clothing, and firing...whether they work or no." (Locke & Wootton, 1993, 452)

The essay on the *Poor Law* articulates an obligation that falls on all people to preserve all human lives, which fits precisely with what the fundamental law of nature

demands. Those unable to work must be provided sustenance from those who are able to provide it. Those able to work are obliged to do so to preserve their own lives, and may be punished, harshly, for not doing so. They cannot, however, be left to perish “whether they work or no.”

5.3 The glaring exception to this remarkable consistency in Locke’s statements on property and charity beyond the *Two Treatises* comes in a 1694 letter to William Molyneux where Locke remarked “I think that everyone, according to what way Providence has placed him in, is bound to labour for the publick good, as far as he is able, or else he has no right to eat.” (Sreenivasan, 1995, 45) This is flatly inconsistent with both what Locke says explicitly in the essay on the *Poor Law*, and with the property system of the *Two Treatises*.

Because they are inconsistent with each other, any interpreter of Locke’s system of property who appeals to his statements on the topic beyond the *Two Treatises* will face an interpretive challenge. How much weight to grant to an unpublished manuscript, a public policy document, and a thought expressed in a personal letter is open to legitimate scholarly disagreement. For my purposes, I wish to place them all beyond the scope of my considered interpretation of Locke’s system of property, even though the two most carefully considered sources are precisely consistent with the system I identify in the *Two Treatises*.

6. Conclusion

In his paper “Property and Hunger,” Amartya Sen argues against the “constraint” view of property rights which sees those rights as non-negotiable “*constraints* on what others can or cannot do.” (Sen, 1988, 58) Views that take property rights to be so utterly inflexible are vulnerable to the “*reductio ad absurdum*” that those property rights cannot be abridged “even though [doing so] might save thousands, even millions, from dying.” (Sen, 1988, 62-63) Taking property rights to function like this leaves open “the possibility that when applied to an actual society, the rights in question may yield hunger, starvation, and even large-scale famine.” (Sen, 1988, 60)

Given some pervasive and persistent interpretations of it, Locke’s own system of property rights might seem vulnerable to such a *reductio*.⁶ As I hope to have shown in this paper, however, the system Locke actually describes in the *Two Treatises* is vulnerable to no such problems, because it will always privilege the preservation of human life over the durability of a property right.

If we were to adopt Locke’s actual system of property, we would have to radically change our current circumstances, but we might not have to eradicate all inequality. If a right to excess property depends on there being no human life in danger in a way that property might protect, there are major implications for global poverty reduction just for a start. At the time Locke himself was writing, it was perhaps plausible to think that one’s excess wealth might be entirely exhausted before it could even reach a far distant human life in danger, and so would be wasted by the effort and immune to the claims those distant humans might have on it. It is no longer plausible to think this now. Since a simple donation to Oxfam could easily and directly preserve a human life, we can no

⁶ While he is careful not to claim that the system he critiques is Locke’s own, Peter Railton offers just such a *reductio* of the “Lockean” system of consequence-insensitive rights in Railton (1985).

longer plead geographical or technological impotence as a defense in preserving our excess property despite human lives being in danger.

If applied to the modern day, Locke's system of property is therefore committed to a view most similar to that of Singer's "Famine, Affluence, and Morality," but will not face precisely the same kinds of objections that the view from that paper might. Instead of requiring a sacrifice to prevent *any* graver moral outcome, Locke's system of property requires only sacrifices of excess property to prevent the loss of human life. Furthermore, such sacrifices are only required when one's "own preservation comes not in competition." (II.6) In a distinctly non-utilitarian way, Locke's system allows someone to prefer their own preservation to that of another (or even several others) and would never demand that someone sacrifice their own life for mere gains of utility. Locke's system demands much of us in our current world, but not our own lives or preservation.

How much wealth redistribution Locke's system requires of our current global economy is radical, but falls well short of a call for wealth equality. What Locke's system demands is a very low-level kind of sufficientarian system that requires a basic floor where every human life is shielded from death by material deprivation. Beyond this, Locke's system does not oblige us to transfer our excess wealth to support the flourishing of others, and might be compatible, in principle, with any level of inequality.

It is hard to know precisely what the world might look like if it met Locke's standards for property, but it might well still involve significant wealth inequalities. Against the accusation that the moral demands of his own view would ruin the economy and so be a greater harm overall, Peter Singer has calculated just how much it would cost to eliminate hunger and deaths from deprivation. Using the U.N.'s "Millennium

Development Goals” which include “reducing by half the proportion of people who suffer from hunger,” Singer proposes a system of graduated charitable giving brackets that would generate eight times the projected amount required to meet the Millennium Development Goals, but still leave the world with many multi-millionaires. (Singer, 2009, 142, 163-167) If Singer’s calculations are correct, legitimate property rights constrained within Lockean bounds might still permit vast inequalities in our present world.

This conclusion rests on the most basic and straightforward understanding of the requirement to preserve human life as much as possible. The eradication of hunger and other immediate threats to life (e.g. lack of shelter and emergency medical treatment) is what is most obviously required by the fundamental law of nature, but its demands could plausibly go further. Perhaps long term and chronic threats (such as lack of preventative medical care) must also be extinguished before accumulating excess. Perhaps every controllable mortal threat, however unlikely, must be dealt with before excess can be gathered legitimately. It is an issue for another time to determine precisely how much the fundamental law of nature would demand. The point here is to notice that the threat here to the plausibility of Locke’s system of property comes from its being overly demanding, instead of being overly permissive.

Taking as fundamental an injunction to preserve human life might also seem an inadequate basis for morality as a whole. Such a principle excludes all non-human life from consideration, is insensitive to disastrous but non-life threatening outcomes, and will be incompatible with autonomy-based arguments to justify assisted suicide or euthanasia. Indeed, the consequences of Locke’s approach to property might be overly paternalistic if they demand we interfere with any fellow human’s activities that threaten

their own life. This is quite far from the radical liberty so often thought to follow from Locke's view, but it might be nothing more than what is required by the fundamental law of nature.

These consequences might then dissuade us from adopting Locke's approach to property as our own, but if our reasons for rejecting Locke's approach are that it is too inflexibly committed to the preservation of human life and so makes demands that are too paternalistic and too great on us, then this paper will have more than achieved its goal of restoring Locke's legacy on property to something resembling its more rightful heirs.

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